IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

CRP.No. 1925 of 2003()

AGAINST THE ORDER DATED 16/07/2003 IN EP 190/2002 IN OS.536/1993 of MUNSIFF COURT, KASARAGOD
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REVN. PETITIONER: PETITIONER IN E.P.

A.PRABHAKARAN NAIK, S/O.KRISHAN NAIK,
KRISHNA NILAYAM, MANDEBETTU IN ADOOR ' VILLAGE,
PO.ORDOOR, KASARAGOD TALUK.

BY ADV. SRI.M.C.SEN
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS: RESPONDENTS IN E.P.
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1. **KRISHNA NAIK, S/O.ATHIAPPA NAIK, RESIDING AT ARTHYA IN ADOOR VILLAGE, PO.URDOOR, KASARAGOD TALUK.**

2. **RUKMINI, RESIDING AT DO. DO. DO. DO**

3. **RAMAYYA NAIK, S/O.AITHIAPPANAIK, R/AT.BANDARAGURI, IN ADOOR VILLAGE, PO.URDOOR, KASARAGOD TALUK.**

4. **KAMALA, W/O.RAMAYYA NAIK, DO. DO.**

5. **BAGU, D/O.ATHIAPPA NAIK, R/AT.ARTHYA IN ADOOR VILLAGE, PO URDOOR, KASARAGOD TALUK.**

6. **LAXMANA, S/O.AITHIAPPA NAIK, R/AT.NADARAGURI, IN ADOOR VILLAGE, PO URDOOR, KASARAGOD TALUK.**

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 1925 OF 2003

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Dated this the 29th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Kasaragod in E.P.190/02 in O.S.536/93 which was an application filed by the plaintiff/decree holder against the defendants/respondents for violating the decree of the Court. The Court below found that there are no sufficient materials to hold the violation of the injunction decree and therefore dismissed the execution petition.

2. Though the service is complete nobody has entered appearance on behalf of the respondent. Therefore, with the help of the learned counsel for the revision petitioner the matter has been heard by me. The relevant paragraph relating to violation of the injunction decree is in paragraph 12 of the execution petition. It is submitted that on 10.11.02 the respondents have obstructed the petitioner from doing agricultural operations in the plaint A schedule property.

3. At the out set I may like to point out that who all obstructed, how obstruction was done and what was the type of obstruction etc. are not pleaded in the petition. Violation of a decree of the Court is a very serious matter and the consequence is arrest as well as attachment of the property. So, it is just like a criminal trespass which has to be viewed very seriously by the Court and the standard of proof required in such matters are also very high. When a specific act of violation of the decree is necessary it has to be pleaded and proved. I had also gone through the evidence of PW1 in the case, the chief as well as the cross-examination. PW1 has deposed about the violation of the decree on 30.5.02 which does not have a place in pleadings in paragraph 12. So far as the violation of the decree on 10.11.02 is concerned it is only stated that the decree holder had gone to the property for doing some agricultural operations and the respondents prevented him from doing the same.

4. A reading of the cross-examination would reveal that so far as his property is concerned there are no arecanut

or coconut trees. There are only cashew nut trees and taking of yields from the cashew nut trees is from February. When a specific act of violation of the decree is to be established the party is expected to plead and prove what was the obstruction, who caused the obstruction and whether there were any witness and what is the violation that has been caused. The pleadings in the execution petition itself is very generic and the evidence also is not pin pointing. Suppose a person goes to his property for agricultural operations as an owner of the property necessarily he will be accompanied by the labourers and there must be some positive evidence to establish at least by examining the labourers how the obstruction had been caused. So, the Court below was right in holding that the evidence adduced was not satisfactory. It is true that ever since the institution of the suit the parties had been tirelessly fighting against each other and I am also aware of the fact that a decree of a Court is to be accepted and respected. But when violation of the decree is sought to be proved it has to be proved to the hilt. Materials available

are not sufficient and therefore I do not find any ground to interfere with the decision of the Court below. Needless to say when there is repeated act or attempt of violation of the decree, the party will be at liberty to move the Court for appropriate reliefs.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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